

June 8 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Guy W. Rogers
Jon A. Wilson
BROWN LAW FIRM, P.C.
315 North 24th Street
P. O. Drawer 849
Billings, MT 59103-08049
(406) 248-2611
Fax: (406) 248-3128
E-mail: grogers@brownfirm.com; jwilson@brownfirm.com
Attorneys for Appellee Andrew J. Breuner

FILED

JUN 08 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 10-0101

CHARLES LOKEY and)	Cause No. DV 08-57B
VANESSA LOKEY,)	Hon. Wm. Nels Swandal
)	
Appellants,)	APPELLEE ANDREW J.
)	BREUNER'S RESPONSE BRIEF
vs.)	IN OPPOSITION TO
)	APPELLANTS' MOTION TO
ANDREW J. BREUNER,)	RECONSIDER DECISION RE:
and A.M. WELLES, INC.,)	ISSUES ON APPEAL
)	
Appellees.)	

COMES NOW Appellee Andrew J. Breuner, by and through his counsel of record, and respectfully submits his brief in opposition to Appellants' Motion To Reconsider Decision Re: Issues On Appeal.

In their Notice Of Appeal, Appellants Charles and Vanessa Lokey (hereinafter "Lokeys") sought to appeal a portion of the District Court's reasoning

in its Order Denying Defendant's Motion For Summary Judgment And Denying Plaintiffs' Motion For Partial Summary Judgment dated June 9, 2009, a copy of which is attached as Exhibit 1. By Order dated March 16, 2010, a copy of which is attached as Exhibit 2, this Court noted: "The Plaintiffs did not seek certification of the court's June 9, 2009 order, nor did the court address that order in granting certification." This Court therefore determined: "IT IS ORDERED that this appeal is allowed to proceed *only* with respect to the matter certified to us, which is the order of dismissal of Plaintiffs' claims against Welles. We will not review the District Court's June 9, 2009 order." *See* Exhibit 2, p. 1 (emphasis in original).

The Lokeys have subsequently moved this Court to reconsider its decision not to review the District Court's June 9, 2009 order, but they have failed to provide any supporting authority. In fact, the Lokeys admit the District Court's June 9, 2009 order is not appealable pursuant to Rule 6, M.R.App.P. The Lokeys suggest without authority that the District Court's June 9, 2009 order "would support a petition for supervisory control pursuant to Rule 14(3), M.R.App.P.," but they have failed to actually petition this Court for supervisory control. Basically, the Lokeys are asking this Court to find them exempt from the Montana Rules of Appellate Procedure so as to excuse their failure to either seek certification of the District Court's June 9, 2009 order or petition this Court for supervisory control.

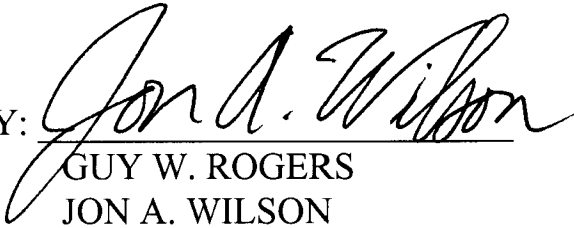
The Montana Rules of Appellate Procedure provide: “These rules shall govern proceedings before the supreme court.” Rule 1(2), M.R.App.P. Additionally, Mont. Code Ann. § 25-12-101 provides: “A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed by the Rules of Appellate Procedure and not otherwise.” Pursuant to Rule 1(2), M.R.App.P., and Mont. Code Ann. § 25-12-101, appeals to this Court must be governed by the Montana Rules of Appellate Procedure, which ensure fairness to all parties by setting forth the rules applicable to appeals. The Lokeys argue this Court is free to “modify” these rules in this particular case, but the result of following such a suggestion would be chaos. Were this Court to “modify” the Montana Rules of Appellate Procedure for the Lokeys in this matter, parties to other appeals would undoubtedly ask this Court to “modify” those aspects of the rules unfavorable to them. The end result would be a substantial increase of motions to this Court and uncertainty regarding the applicability of the Montana Rules of Civil Procedure.

To avoid such an outcome, Appellee Breuner respectfully requests that this Court deny Appellants’ Motion To Reconsider Decision Re: Issues On Appeal. Also, because the District Court’s Order dated June 9, 2009 is not properly before this Court, Appellee Breuner respectfully requests that this Court disregard those portions of Appellants’ Brief which address the District Court’s Order dated June

9, 2009.

RESPECTFULLY SUBMITTED THIS 7th day of June, 2010

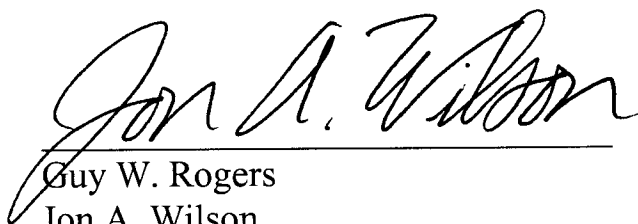
BROWN LAW FIRM, P.C.

BY: 
GUY W. ROGERS
JON A. WILSON
*Attorneys for Appellee Andrew J.
Breuner*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, the undersigned certify that the foregoing is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count is 574 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 7th day of June, 2010.

A handwritten signature in cursive script, reading "Jon A. Wilson", written over a horizontal line.

Guy W. Rogers

Jon A. Wilson

Attorneys for Appellee Andrew J. Breuner

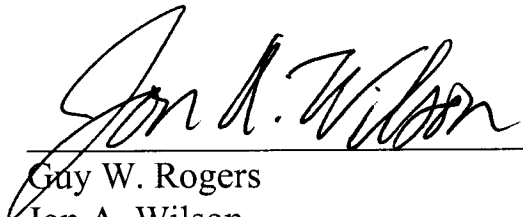
CERTIFICATE OF SERVICE

The undersigned hereby certify that they are members of the bar of this Court in good standing and counsel for the Respondent.

The foregoing was served by mail this 7th day of June, 2010, upon the following:

Martin R. Studer
Attorney at Law
638 Ferguson Avenue, Ste. 1
Bozeman, MT 59718
Attorney for Appellants

Allan H. Baris, Esq.
Moore, O'Connell & Refling, P.C.
P.O. Box 1288
Bozeman, MT 59771-1288
Attorneys for Appellant A.M. Welles, Inc.



Guy W. Rogers
Jon A. Wilson
Attorneys for Appellee Andrew J. Breuner